

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SUHAIL NAJIM ABDULLAH . Civil Action No. 1:08cv827
AL SHIMARI, TAHYA YASEEN ARRAQ .
RASHID, SA'AD HAMZA HANTOOSH .
AL-ZUBA'E, AND SALAH HASAN .
NUSAIF JASIM AL-EJAILI, .
. Plaintiffs, .
. vs. . Alexandria, Virginia
. November 30, 2018
CACI PREMIER TECHNOLOGY, INC., . 10:02 a.m.
. Defendant. .
.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE JOHN F. ANDERSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: TERRA HITTSON, ESQ.
Patterson Belknap Webb &
Tyler LLP
1133 Avenue of the Americas
New York, NY 10046

FOR THE DEFENDANT: JOHN F. O'CONNOR, ESQ.
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

FOR THE THIRD-PARTY
DEFENDANT: LAUREN A. WETZLER, AUSA
Office of the United States
Attorney
2100 Jamieson Avenue
Alexandria, VA 22314

(APPEARANCES CONT'D. ON PAGE 2)

(Pages 1 - 24)

(Proceedings recorded by electronic sound recording, transcript
produced by computerized transcription.)

1 APPEARANCES: (Cont'd.)

2 FOR THE THIRD-PARTY
3 DEFENDANT:

ELLIOTT M. DAVIS, ESQ.
ERIC J. SOSKIN, ESQ.
U.S. Department of Justice
Civil Division, Torts Branch
Benjamin Franklin Station
P.O. Box 888
Washington, D.C. 20044

6 THE TRANSCRIBER:

ANNELEISE J. THOMSON, RDR, CRR
U.S. District Court, Third Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

2 THE CLERK: Suhail Al Shimari, et al. v. CACI Premier
3 Technology, Inc., et al., Civil Action No. 08cv827.

4 MR. DOLAN: Good morning, Your Honor. John O'Connor
5 for CACI Premier Technology, Inc.

6 THE COURT: Thank you, Mr. O'Connor.

7 MS. HITTSON: Good morning, Your Honor. Terra
8 Hittson for the plaintiffs.

9 THE COURT: Thank you.

10 MS. WETZLER: Good morning, Your Honor. Lauren
11 Wetzler for the United States. With me are Eric Soskin and
12 Elliott Davis, and Mr. Soskin will be arguing for the United
13 States.

14 THE COURT: Okay. Thank you.

15 Well, go ahead and have a seat. I'm going to just
16 give you a few little comments and then observations and then
17 hear whatever you-all would like to say to add on to that.

18 First, I really appreciate the parties' continuing
19 efforts to try and get the matter resolved or at least narrowed
20 down, and you-all have made some substantial progress on that.
21 By my count, we're down to about 90 pages, I think, of
22 materials that have, have redactions on them.

23 I have read all the materials that have been
24 submitted and have looked at all of the exhibits, at least the
25 ones that are in, are in dispute. So, you know, it's -- we'll

1 carry forward based on that knowledge.

2 First, I don't really think that there's any dispute
3 that the procedural requirements for the assertion of the state
4 secrets privilege has been asserted, been followed and done
5 properly. There've been a formal assertion by the United
6 States, live by the Secretary of Defense, after actual personal
7 review, as is basically required by *Reynolds*.

8 The only issue, and I'm going to need to have the
9 United States address this, in my mind -- and I understand I
10 have to provide the utmost deference to the assertion, but it
11 has to do with the assertion of the names of the detainees. My
12 review of the Mattis declaration, I think it clearly addresses
13 the need to protect the names and the identities of the
14 intelligence interrogators and anyone who's supporting them.
15 We've addressed that issue previously with even his earlier
16 declaration, and this one again does that again, I think,
17 pretty thoroughly, but the issue is not clear to me when I read
18 that declaration as to the detainee names in and of themselves
19 being something of danger.

20 The declaration discusses that if the interrogators'
21 names in conjunction with the detainee names is released, it
22 could cause harm to the interrogators, and I'm, I'm a little
23 concerned and I do want to have that addressed as to where in
24 that declaration or what is the danger in having the detainee
25 names and, obviously, the plaintiffs' names, it's not part of

1 that, disclosed. So that's one issue that I need to have
2 addressed at the hearing.

3 Looking at the documents -- and I, I may be wrong on
4 this, but this is just sort of my review and the way that I see
5 things coming into here -- and I'll just mention that my review
6 had been limited in two respects, so these comments have to
7 take that into, into context.

8 First, the submission that we got yesterday or the
9 day before about the documents that are still in dispute talk
10 about that they've been redacted -- they've been produced in a
11 less redacted form. It doesn't tell me what was produced and
12 what still remains redacted. I kind of have been able to look
13 at the documents that have been taken off the list and have a
14 pretty good idea of, you know, what was produced more recently
15 and what still remains redacted, but, you know, I didn't have
16 the most recent redacted version of the documents like I did
17 have in the initial motion.

18 The other is Exhibit 10, and I know this was probably
19 just, probably a production error. Exhibit 10 doesn't have the
20 USA Bates numbers on them, at least the version that was
21 provided to me. It's got other designating numbers on it.

22 What I did was I basically looked at all of those
23 documents, tried to figure out which ones were the ones that I
24 thought were the ones that were really being contested, and,
25 you know, for the most part, they seem to have the same issues

1 as in the Al Shimari ones that are in Exhibit 9, so I don't
2 think that is -- has any real impact, but I just want to let
3 the parties be aware of that.

4 Having looked at the documents, I mean, I think that
5 the largest number of documents that are being withheld relate
6 to the ISN serial numbers or other coding information, such as
7 the capture unit and things like that, just as far as the bulk
8 of the number of documents. It looks like, at least my review,
9 that all the documents in Exhibit 8 except one that may be the
10 interpreter information, that one is a little bit unclear to
11 me, that half the documents in Exhibit 9 and about half the
12 documents in Exhibit 10 seem to be redactions that were really
13 just having to do with the ISN serial -- or portions of that
14 having to do with not the six-digit detainee number but the
15 other coded information.

16 The next largest group at least by my count are the
17 names of the detainees, the other names of the detainees, and I
18 think all of the documents in Exhibit 15 and possibly most, if
19 not all, of the documents in Exhibit 18 deal with that. I
20 think Exhibit 18 may have two, unless you're talking about the
21 interpreter names or the interrogator names and not the
22 detainee names, but the statements from the actual detainees.
23 But that's sort of the, the grouping of numbers of documents.

24 And then the final is what really at least in my view
25 appears to be more substantive documents, the ones that -- the

1 documents in Exhibits 9 and 10 that relate to the methods of
2 the interrogating, the effectiveness, the plans, and the
3 assessments, those kinds of things, which certainly to me seem
4 to be the more substantive area in which there is a need to
5 have that information.

6 Again, as an initial matter, I mean, having looked at
7 the document requests, having looked at the information, having
8 considered what -- the generalized description of what is being
9 withheld, I am finding and I do believe that the information
10 that's being withheld is information that is relevant to a
11 claim or defense in the lawsuit, and it is proportional to the
12 needs of the case, that absent the assertion of the state
13 secrets privilege, that that information otherwise would need
14 to be produced.

15 So that is, I think, one element of what I have to
16 deal with today. So basically, the information that has been
17 redacted, I think, based on my review of the pleadings, my
18 understanding of what is in that information, that it would
19 fall, and some of it may be more relevant than others, but I
20 think all of that information meets the relevance standard for
21 production in discovery.

22 But I also believe that if I find that the state
23 secrets privilege has been properly evoked as to certain
24 information, then I must deny the motion to compel. So I don't
25 think I have any real discretion in dealing with that issue at

1 this point.

2 And then finally, you know, based on the current
3 status and, you know, obviously, this came about as a motion to
4 compel being filed, which prompted the United States to then
5 formally assert the state secret privilege, the reply coming in
6 and indicating that, you know, now that you've done that, the
7 case ought to be dismissed or, you know, sort of making that
8 overture in there, you know, that isn't the -- the request for
9 dismissal or the assertion that the case should be dismissed at
10 this point in time really wasn't part of the motion to compel.
11 You know, this is kind of a procedural issue, but I think it's
12 a significant one.

13 It really wasn't addressed directly in the motion to
14 compel, which means the parties haven't had an opportunity to
15 brief that, and obviously, I suspect plaintiffs' counsel will
16 want to have an opportunity to address that issue before it
17 gets decided, and that is an issue that's significant, I think
18 requires full briefing by all the parties and should be the
19 subject of a separate motion that is, you know, done on a
20 briefing schedule.

21 So, you know, I, I don't intend for this argument to
22 include the idea that if I grant the state secret or find that
23 the invocation of the state secret privilege has been
24 appropriate and deny the motion to compel based on that, then
25 we then are going to deal with the issue of the next step of

1 dismissal, because I don't think the parties have had an
2 opportunity to fully brief that, and I do think, obviously,
3 that would, that would not be an issue that I would make the
4 ultimate decision on, and it probably makes more sense for it
5 to be fully briefed and noticed for a hearing and more likely
6 than not be heard initially by the district judge, or if she
7 decides she wants me to hear it, I'll hear it and do a report
8 and recommendation, but I think the parties are entitled to
9 full briefing on that issue, and, you know, it's gotten
10 narrowed down to a certain limited area of information, too,
11 that is, is less than what it was when the initial motion got
12 filed.

13 So initially, I'd like to hear from the United States
14 about the detainee name issue. Then I'll hear from any of the
15 other parties on any of the other issues that, that I've
16 discussed.

17 And I think probably pages 9 through 12 are, at least
18 from my, if I remember this right, were the, probably the pages
19 in the declaration that would deal with the information that I
20 think I am most concerned about. Okay? Thank you.

21 MR. SOSKIN: Yes, Your Honor. And I have page 9 of
22 the declaration and subsequent pages open before me now. I
23 appreciate the attention to detail that the Court has provided
24 and the direction in focusing its attention on the particular
25 issues that you're most interested in, and with regard to the

1 Court's question about detainee inmates, I think it would be
2 helpful to take a step back and recognize that what Secretary
3 Mattis is asserting the privilege over and has in the previous
4 two assertions is the relationship between particular
5 interrogators and particular detainees.

6 The Department of Defense has not in general
7 protected the names of personnel in the abstract with
8 classification and state secrets, and it has not protected the
9 names of detainees in the abstract. It is when those two are
10 joined together in the context of particular intelligence
11 interrogations that the most significant harms identified by
12 Secretary Mattis arise.

13 And, and in the explanation of harms in the
14 declaration, I think the key element to focus on is Secretary
15 Mattis's discussion of possible retribution. In paragraph 9 on
16 page 9, about a dozen lines down, you will see the phrase "an
17 unacceptable risk of harm through possible retribution by the
18 detainees, groups to which the detainees belong, or other
19 sympathizers," and if you consider the meaning of what
20 "retribution" is, retribution is a very personal-type act. It
21 is something for which the risk is greatly magnified, where
22 there is a one-to-one relationship, where you know that this is
23 the person who committed an act against me that I was
24 dissatisfied with, even an ordinary, lawful interrogation or an
25 insult on the street. One does not respond with retribution to

1 a group at large in the same way that one does in a one-to-one
2 manner.

3 And here, where in order to satisfy the Court's
4 request that the United States release as much information as
5 possible during discovery, what the Department of Defense and
6 the United States have done is produce certain witness
7 statements that were created during the course of the
8 government investigations, and on those witness statements, it
9 has identified who the interrogation personnel giving the
10 statement were.

11 So the only element that can be withheld in that
12 context from the relationship between interrogation personnel
13 and particular detainees is the name of that detainee, and so
14 that name remains classified as the element that would
15 establish the connection between particular detainees and
16 particular personnel and make these risks associated with
17 retribution much more live and much more significant.

18 THE COURT: Well, in each instance in which a
19 detainee has been -- a detainee's name has been redacted from
20 the documents, is that, in fact, in a document that identifies
21 the interrogator, or does the interrogator identify the
22 detainee and say that observed certain activity done maybe by
23 other interrogators?

24 MR. SOSKIN: If the question is is the -- is it
25 always the statement of the interrogation personnel in

1 question, as opposed to does the document incidentally name an
2 interrogator or other personnel, I think both ways are the
3 case.

4 THE COURT: Well, help me -- and maybe you can guide
5 me a little bit by looking at one example or one or two
6 examples of the actual -- and I guess these would probably be
7 in either Exhibits 9 or 10 --

8 MR. SOSKIN: I do --

9 THE COURT: And may be easier to do Exhibit 9 since
10 we can work with the USA Bates numbers on those --

11 MR. SOSKIN: Yeah, I have copies of our most recent
12 productions with Bates numbers, but Mr. O'Connor is going to
13 help me out with exhibit numbered copied -- copies.

14 THE COURT: Okay.

15 MR. SOSKIN: So in Exhibit 9, is there a
16 particular --

17 THE COURT: Well, I mean, I'm trying to understand
18 this issue where you say it's, well --

19 MR. SOSKIN: So, for example, if we were to turn to
20 Bates No. USA52105, I think this is an example of a -- the name
21 of a detainee redacted, and that appears in Exhibit, Exhibit
22 18, okay. In Exhibit 18.

23 THE COURT: Exhibit 18, okay. 52- --

24 MR. SOSKIN: -- -105.

25 So this document is a statement by Teresa Adams, so

1 that person is identified, and if in that document there was
2 discussion of a detainee who Ms. Adams was -- I think that's
3 Sgt. Adams -- was, you know, associated with an intelligence
4 interrogation of, of course we would withhold the detainee's
5 name because that would establish the relationship. So that's
6 one example.

7 But in a specific example on 52105, it is the other
8 way. Sgt. Adams is discussing interrogations, intelligence
9 interrogations conducted by another interrogator, and
10 identifies that interrogator by name, and because fewer
11 redactions would be required on this page and more information
12 would thus be producible by providing the interrogator name,
13 what has been redacted about two-thirds of the way down on the
14 right is a name, blank and his four associates, and that would
15 be the name of a detainee who we would be connecting to a
16 specific identified interrogator if we were to release that
17 name.

18 THE COURT: Okay. And it's the government's position
19 that each -- in each instance in which the detainee names have
20 been redacted, that the basis for doing that was because the
21 redaction of that detainee's name could be tied back to an
22 individual interrogator or personnel assisting in the
23 interrogation, and that's where the potential for retribution
24 comes into play?

25 MR. SOSKIN: In an intelligence interrogation, that's

1 right, Your Honor. And I have made an effort to read through
2 all of these redactions on several occasions, most recently in
3 the last day. Nothing jumped out at me as an instance where
4 that was not the case, but if Your Honor has a specific concern
5 about one or more redactions, we would certainly take the time
6 to address that.

7 THE COURT: Okay. All right. Well, I think I better
8 understand that issue now that it's in the context of these
9 reports in which you would be able to tie the actual personnel
10 involved in the interrogation with a specific detainee if that
11 specific detainee's name was not redacted. Is that right?

12 MR. SOSKIN: Right. And I can give you an example of
13 the other kind that appears in the statements on Bates No.
14 52147. It is the statement of Torin Nelson, and so here it is
15 a case where what is withheld is a detainee associated with the
16 specific person giving the statement.

17 THE COURT: Um-hum.

18 MR. SOSKIN: 52147 is --

19 THE COURT: Let me --

20 MR. SOSKIN: Also is, also in Exhibit 18.

21 THE COURT: Okay.

22 MR. SOSKIN: And again, about two-thirds of the way
23 down on the right, you will see some blank spots that are --
24 reflect redactions. There is a sentence that says: I was
25 working on the special projects team and was handed a

1 high-value detainee, HVD, named, and then it is redacted.
2 On -- and, you know, that would clearly be an example where
3 the "I" is the name of the person giving the statement, and so
4 what has been withheld is the detainee that that person was
5 involved in an intelligence interrogation of.

6 THE COURT: Okay. Okay. Thank you. I think that
7 clarifies that issue for me.

8 MR. SOSKIN: Okay.

9 THE COURT: Thank you.

10 MR. SOSKIN: Your Honor also raised the question of a
11 desire to review the most recent redacted versions of each of
12 these pages.

13 THE COURT: Well, it's not a desire. It was just
14 more of a limitation on what I was able to do. If you wouldn't
15 mind, just give me an overall analysis of what, I mean, if
16 there was a specific type of information that you decided was
17 no longer necessary to redact or whether it was more of a
18 specific individualized, so, like, was it a certain part of the
19 ISN number that has now been released or, or -- that was at
20 least my sense from looking at the documents, but help me
21 understand what, what prompted the production of additional
22 information.

23 MR. SOSKIN: I think that that was often the case.
24 What our review was able to do here was because we had a much
25 narrower number of pages for reviewers to focus on thanks to

1 the efforts of CACI counsel to cooperate with us in narrowing
2 the areas of dispute, you know, we were able to look at every
3 individual -- every individually segregable item and assess
4 would there be a national security harm to disclosing this
5 information.

6 As you know, documents are typically classified at
7 the highest level of any information that appears in them, and
8 then within documents, pages are classified in that way, and
9 within pages, paragraphs are classified in that way, and the
10 ability to go through and conduct a review of what needs to
11 remain protected, you know, cannot focus on individual words
12 when you have 50,000 pages at issue. It can do so when you
13 have several hundred pages at issue.

14 And further, ascertaining whether detainee names, for
15 example, that appeared in some of these documents were
16 associated with an intelligence interrogation, as opposed to
17 just being a name, was also something that was more possible to
18 do in this kind of focus.

19 I think there were also some, you know, there were
20 some areas of -- there were some areas regarding the
21 interrogation, you know, certain details of interrogations or
22 information provided that were in the files that as we have
23 conducted reviews on DoD's reviewing personnel were able to
24 ascertain that this could be disclosed, because as you know,
25 and as I think it's Abilt makes clear in footnote 5 and other

1 state secrets cases make clear, it is not enough for the United
2 States to rely on the fact that something has been classified
3 in the past.

4 THE COURT: Right.

5 MR. SOSKIN: We must look at what the harms are going
6 forward. So what's being released is the information that
7 would not reasonably be expected to cause a national security
8 harm were we to release it.

9 THE COURT: Okay. Thank you.

10 I'll hear from Mr. O'Connor first and anything the
11 plaintiffs want to say.

12 MR. SOSKIN: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. O'CONNOR: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. O'CONNOR: I want to join in Mr. Soskin's
17 comments about the helpfulness of your introductory comments
18 because it does focus and substantially shorten what I will
19 have to say today, which I think benefits everyone. Building
20 on Your Honor's questions to Mr. Soskin, the -- he's right that
21 it's, the pairing seems to be the issue, and the things that
22 you've seen in the documents actually has come up a lot in this
23 case.

24 I'll give you an example. We take a deposition of an
25 interrogator, pseudonymously, of course, and he says: I saw an

1 interrogator shove a detainee.

2 At that point, I've got a choice. I can ask who the
3 interrogator is or I could ask who the detainee is, but I can't
4 ask both. And so, so that's, I think, what you're seeing in
5 some of the documents is the witnesses making a statement about
6 an interrogator and his or her assigned detainee and they've
7 had to redact one or the other, and -- because that prevents
8 the pairing. Either by themselves I don't think would be
9 something they would view as classified.

10 Your, Your Honor indicated no -- your sense is that
11 there's no dispute with the procedural requirements. I think
12 that's right. You know, facially, Secretary Mattis's
13 declaration meets the *Reynolds* standard, and we don't have any
14 data points to tell you that it doesn't.

15 We also agree that Your Honor's assessment of what
16 happens if the privilege is upheld is right. I don't -- I
17 think that pretty much just ends the inquiry on the documents.
18 It leaves open an issue of what, what to do next, but, but
19 that, I think, is right. I don't think there's a balancing at
20 that point. If Your Honor upholds the privilege, we're done
21 talking about that document at least in terms of production.

22 Your Honor indicated your sense that ISNs and
23 detainee names were the most common issues of redacted
24 material. Certainly ISNs, that's true. I'm not sure if the
25 detainee names compared to the things in plaintiffs' detainee

1 files about interrogation plans, interrogation approaches,
2 approved methods, assessments, things like that, but I will say
3 that qualitatively, all those things in the detainee files are
4 much closer to the bull's eye, I would say in the bull's eye of
5 what we would need in this case compared to the others, which I
6 think are all relevant and necessary, but qualitatively, you
7 know, they would be my second and third points to make, not my
8 first. It's really the detainee files and what happened in the
9 interrogation of these plaintiffs.

10 The --

11 THE COURT: I was commenting on number and not
12 significance.

13 MR. O'CONNOR: Right.

14 THE COURT: I think looking at the number of pages,
15 at least from what I could tell, that of the 87 or 90 pages of
16 documents, the, the larger number or the largest of, if you put
17 it into three categories of ISN numbers and coding information,
18 capture places and, you know, pre-investigation or
19 pre-interrogation information and, you know, getting them
20 located and assigned to Abu Ghraib and those kinds of things,
21 that's one set of -- that I think the larger number of
22 documents relate to that information.

23 MR. O'CONNOR: For sure. I don't think there's any
24 doubt about that.

25 THE COURT: Okay.

1 MR. O'CONNOR: And the other thing I wanted to talk
2 about briefly is Your Honor's procedural point at the end of
3 your comments about how the request for dismissal was made on
4 reply, and surely that's right because the way to get a -- you
5 know, we don't get the state secrets invocation until we've
6 moved to compel, and so I understand Your Honor's point about
7 procedural posture.

8 The one thing I would say from a practical standpoint
9 is, you know, if Your Honor's thinking is, well, you know,
10 we're already -- we've already with the interrogator identities
11 said, well, you know, you can come back when those are all done
12 and you can raise whatever arguments you've got, we're okay
13 with that, and we're okay with Your Honor's approach here.

14 What I'd like to do is minimize the prospects that we
15 have to file an objection just to make sure no one says we
16 waived. And so if Your Honor's thought is this motion isn't
17 seeking dismissal because the motion itself did not, then a
18 ruling that deals just with whether state secrets are properly
19 involved is, that's probably something that we don't need to
20 waste Judge Brinkema's time dealing with an objection to
21 something that we're basically okay with.

22 If there were a denial of dismissal in Your Honor's
23 order, then we'd probably start thinking, well, jeez, have we
24 waived something?

25 And so I think the approach that Your Honor is

1 talking about makes sense to us, that we -- it makes little
2 sense to say: Let me look at these -- this state secrets
3 assertion and see what we should do with the case and then
4 later look at this one and then later look at the third one.
5 It should all be done at once.

6 THE COURT: All right.

7 MR. O'CONNOR: We all understand that.

8 THE COURT: Okay.

9 MR. O'CONNOR: If Your Honor has any further
10 questions, I'm happy to answer them.

11 THE COURT: No, I really don't. I mean, I think
12 I've, you know, considered pretty much everything I had to
13 consider so far coming in, but I'll -- anything that the
14 counsel for the plaintiffs would like to add at this point?

15 MS. HITTSON: Thank you, Your Honor. I want to echo
16 CACI and the government's comments that your opening remarks
17 were very helpful, and you already addressed the one point that
18 I planned to raise, which was that in CACI's reply brief, they
19 mentioned that the case should be dismissed, and we agree with
20 Your Honor's comments that this is procedurally improper and
21 should be addressed and it's on separate briefing.

22 Thank you.

23 THE COURT: Anything else from the United States?

24 MR. SOSKIN: Your Honor, I left just a little unclear
25 on whether you would like us to submit the newly redacted

1 versions.

2 THE COURT: Well --

3 MR. SOSKIN: We could certainly provide them, a
4 courtesy copy of them for you if you would like.

5 THE COURT: No. And I, you know, I think what the
6 next step is, the smaller group of documents that are redacted
7 will have to be presented along with the motion to dismiss in
8 that next stage. I, I don't think I need to see them for the
9 purposes of my ruling on this issue today.

10 I think it's clear enough the way that it is, but I
11 would suggest that when this gets revisited in the follow-on
12 motion, that, you know, the most recent version of the redacted
13 documents and ones with the Bates numbers on them and, and the
14 other exhibit be provided so that Judge Brinkema can look at
15 the most recent versions and, and compare them. Okay?

16 MR. SOSKIN: Thank you, Your Honor.

17 THE COURT: Well -- Mr. O'Connor?

18 MR. O'CONNOR: Your Honor, could I ask one case
19 management question that's not related to this motion?

20 THE COURT: Sure.

21 MR. O'CONNOR: Last Tuesday, we filed a motion in
22 limine, and because it was non-dispositive, we served -- we
23 provided a hard copy only to Your Honor's chambers, but as it
24 turned out, Judge Brinkema didn't refer it. Do we need to --
25 should we send her a copy, or did you send it over?

1 THE COURT: We have delivered that copy to Judge
2 Brinkema's chambers, so --

3 MR. O'CONNOR: That's -- that answered my question.

4 THE COURT: And while that's -- that sometimes is a
5 gray area on, on a motion in limine, I would say most district
6 judges decide those motions unless it is based on a procedural
7 issue like limiting an expert testimony because the expert
8 didn't provide a report or something like that.

9 MR. O'CONNOR: Understood.

10 THE COURT: If, if it's something that is -- we all
11 know that Judge Brinkema is very on top of her document --
12 docket and stays involved in the case, and so she's probably
13 going to hear any kind of motions in limine and those kinds of
14 issues going forward, but you don't need to provide her with a
15 copy because we've given her ours.

16 MR. O'CONNOR: That's what I wanted to know. Thank
17 you.

18 THE COURT: So that's been taken care of.

19 Well, I think the parties understand the basis for my
20 ruling on this, and I, I will try and make sure that the order
21 is clear that I'm not denying the motion to dismiss. I'm only
22 denying the motion to compel, that I don't believe that there
23 was an appropriate request for further action based on the
24 motion to compel being denied, so that you won't need to appeal
25 this decision to preserve your rights to raise what issues that

1 you think need to be raised based on the denial of the motion
2 to compel.

3 Anything else this morning?

4 MR. SOSKIN: No, Your Honor. Thank you.

5 THE COURT: Okay. Thank you-all very much. I
6 appreciate very good briefings on these issues, and again, I
7 commend the parties for working together, as you-all have done
8 throughout this case, and this -- this could be my last time
9 that you have to be in front of me. I don't know. I'm not --
10 no promises, but thank you very much.

11 MR. O'CONNOR: I'd be surprised, Your Honor.

12 THE COURT: Court will be adjourned.

13 (Which were all the proceedings
14 had at this time.)

15
16 CERTIFICATE OF THE TRANSCRIBER

17 I certify that the foregoing is a correct transcript from
18 the official electronic sound recording of the proceedings in
19 the above-entitled matter.

20
21 _____ /s/
22 Anneliese J. Thomson
23
24
25